IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 660 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
DIWALIBEN NATHALAL & 1 - Defendant(s)

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Appearance :

MR MD PANDYA for Appellant(s) : 1,
(MR MC KAPADIA) for Defendant(s) : 1,1.2.1
DS AFF.NOT FILED (R) for Defendant(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5
MR NM KAPADIA for Defendant(s) : 1.2.2, 1.2.3, 1.2.4,1.2.5
DELETED for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 17/01/2007

ORAL JUDGMENT

The Gujarat State Road Transport Corporation has filed this

appeal to challenge judgment and award made by the Motor Accident Claims Tribunal [Aux.] Mehsana dated 4/5/1984 in M.A.C. Petition No. 184/1981, whereby the Tribunal has granted compensation of Rs.35,000/- to the heirs of original claimant Nathalal Joitaram Patel, who died during pendency of the proceedings.

2. Deceased claimant Patel Nathalal Joitaram sustained injuries on 6/2/1981 while he was proceeding on a bicycle on Unjha road at about 5.30 p.m. He was knocked down from behind by original respondent no. 2, who has been deleted from this first appeal vide order dated 23/8/2006. He was driving bus belonging to the appellant bearing registration no. GRS 8421. According to the claimant, he drove the bus in rash and negligent manner and collided with the deceased claimant from behind. As a result of the impact, he was thrown off his bicycle and he sustained serious head injuries. He was removed to Cottage Hospital at Unjha and thereafter he was transferred to Civil Hospital at Ahmedabad for further treatment. At Ahmedabad he was extensively treated by Neuro Surgeon Dr. P R Thakore and Dr. D N Patel, Radiologist. Subsequently he filed application under the provisions of the Motor Vehicles Act, 1939 [hereinafter referred to as 'the Act'] for claiming compensation of Rs.35,000/-. The record shows that during the pendency of the proceedings he expired. His heirs and legal representatives, therefore, prosecuted the proceedings with the permission of the Tribunal. Before the

Tribunal, the parties led evidence, oral as well as documentary. It was contended that the death occurred due to the injuries sustained by the deceased-claimant in the accident in question. The Tribunal on the basis of the material produced before it, held that the accident occurred solely due to the negligence of driver of the S.T. Bus. So far as the quantum is concerned, the Tribunal considered the evidence in detail and assessed the dependency benefit at Rs.39,000/-. It also granted compensation of Rs.1,000/- for purchase of medicines, for medical treatment, etc., and Rs.500/- for transport charges. However, since the claim was of Rs.35,000/-, the Tribunal allowed it fully and granted Rs.35,000/- by way of compensation together with interest at the rate of 6% p a from the date of application till realization and proportionate costs. Hence this appeal.

3. I have heard Ms. Maya S Desai, learned advocate appearing for the appellant and Mr. NM Kapadia, learned advocate appearing for respondents. It is submitted by Ms. Desai that the Tribunal has committed error in granting compensation to the respondents since this was a case of personal injury and the cause died with the person. She has further submitted that the Tribunal committed error in holding that the death of the deceased claimant occurred due to the injuries sustained by him in the vehicular accident in question. She has submitted that he died almost after 3 years of the accident and there was no direct nexus between the injuries and the death.

3.1. As against that, Mr. Kapadia has supported the judgment and submitted that in the facts and circumstances, the finding given by the Tribunal is just and proper.

4. I have carefully considered the submissions made by the learned advocates. I have also closely perused the record and proceedings of the case. So far as the question of negligence is concerned, it is not seriously contested by Ms. Desai. I have also perused the evidence on that aspect. Faint attempt has been made to suggest that the deceased – claimant did not know how to ride bicycle and when he saw the bus, he got confused and frightened and he fell down on the road. There was no collision with the bus. However, this version cannot be accepted. There is ample material to show that when the deceased was proceeding on Unjha road, the bus driven by original respondent no. 2, gave him a push from behind and knocked him down on the road. As a result of the same, he sustained serious injuries on head. When this is the position, it is very obvious that the deceased was not at all at fault since he was proceeding on his correct side of the road and he was knocked down from behind by the bus. The entire responsibility of the accident is that of the driver of the bus. I am, therefore, in total agreement with the finding given by the Tribunal on that count.

4.1. So far as the submission of Ms. Desai with regard to death of deceased claimant is concerned, she has tried to persuade me that it is not due to the injuries sustained by him. The medical evidence shows that the deceased had sustained linear occipital fracture which had created multiple complications. He was hospitalized for substantially long period during which he was treated by the Neurologist and also the Radiologist. The medical certificate issued by Dr. P R Thakore is produced at Exh. 39. It shows that the deceased – claimant had loss of interest, he had suffered inability to recognize people, spoke only occasionally when he was called. He also developed renal problem and became uncooperative. He hardly answered the questions put to him. It is in the evidence of Diwaliben Nathalal, wife of the deceased claimant that even after the treatment he was having epileptic fit and he was unable to come out of the house, attend to his duties and his plight had become miserable. Her evidence shows that even immediately prior to his death, he was having convulsion which was part of the complications developed by the deceased – claimant after the accident. In this view of the matter, there is no doubt in my mind that the injuries sustained by him during the accident were ultimately responsible for his death. To his good fortune and good fortune of his family, he could live for another three years even with these complications. Nevertheless it can hardly be said that he did not die of the injuries suffered by him. In other words, the record of the case clearly shows that there was direct nexus between the injuries suffered by him in the accident in question and his

death. In view of the same, the finding given by the Tribunal cannot be said to be erroneous.

4.2. So far as the quantum of compensation is concerned, per-se, keeping in view the facts and circumstances of the case, is inadequate. However, since the claim was of Rs.35,000/-, the Tribunal has awarded it fully. I have perused the discussion thereon and I find no error having been committed by the Tribunal. No request is made at any stage for enhancement of the claim. Thus, this appeal has no merit and it is dismissed with no order as to costs.

[Akshay H Mehta, J.]

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